April 2, 2004

D.T.E. 03-60 Track A and Track B

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers.

INTERLOCUTORY ORDER ON MOTION TO STAY OF VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS

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INTERLOCUTORY ORDER ON MOTION TO STAY OF
VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS

I. INTRODUCTION

On August 21, 2003, the Federal Communications Commission ("FCC") released its Triennial Review Order,[1] in which the FCC revised its rules concerning the obligations of incumbent local exchange carriers ("ILECs"), such as Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"), to make elements of their networks available on an unbundled basis to competing carriers at TELRIC rates.[2] In the Triennial Review Order, the FCC determined that state public utility commissions would have a substantial role in determining whether competing local exchange carriers ("CLECs") would be "impaired" by lack of access to an ILEC's network elements.[3] The FCC directed state public utility commissions to conduct analyses, in accordance with standards set by the FCC, to determine whether the FCC's national findings of CLEC impairment do not apply to particular market

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1 In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. August 21, 2003) ("Triennial Review Order").

2 TELRIC (i.e., Total Element Long-Run Incremental Cost) is a method of determining the cost of network elements based on incremental costs of equipment and labor, not counting embedded costs. See 47 U.S.C. § 252(d)(1)(A); 47 C.F.R. § 51.505.

3 According to the FCC, a CLEC is "impaired" when lack of access to an incumbent LEC's network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic. Triennial Review Order at ¶ 84.

areas, customer locations, or transport routes. The FCC directed state commissions to complete these analyses within nine months of the effective date of the Triennial Review Order (i.e., by July 2, 2004). See Triennial Review Order at ¶¶ 339, 417, 527.

Shortly after the FCC released the Triennial Review Order, the Department opened this investigation, docketed as D.T.E. 03-60, to implement the requirements of the FCC's order specifically relating to switching for mass market customers.[4] The investigation was later expanded to include analyses of the loop, transport, and hot cuts issues raised by the Triennial Review Order. The Department then divided its proceeding into two tracks: Track A to investigate the impairment issues relating to loops, transport, and mass market switching; and Track B to investigate Verizon's three hot cuts proposals.[5]

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[4] The Department also opened a companion proceeding, D.T.E. 03-59, to address the requirements of the FCC's Triennial Review Order regarding switching for enterprise customers. The FCC defines enterprise markets as medium and large business customers that can be served with a DS1 capacity or above loop. Triennial Review Order at ¶ 209. The FCC defines mass market customers as residential and small business customers that typically use analog loops, DS0 loops, or loops using xDSL-based technologies. Id. In November 2003, the Department issued an Order in D.T.E. 03-59 concluding that parties had not demonstrated the existence of impairment in the enterprise market in Massachusetts. D.T.E. 03-59, Order Closing Investigation (November 25, 2003).

[5] The Department's Track B investigation consists of analyses of Verizon's proposed batch hot cuts and "large job" hot cuts processes in response to the FCC's requirements in the Triennial Review Order (see D.T.E. 03-60, at 24-40, Verizon Initial Testimony (November 14, 2003)), as well as an evaluation of Verizon's proposed Wholesale Provisioning Tracking System ("WPTS") process for individual or "non-batch" hot cuts, an issue imported from the Department's UNE Rates Proceeding, D.T.E. 01-20. See D.T.E. 03-60, at 2, Hearing Officer Memorandum (November 24, 2003) (expanding the D.T.E. 03-60 investigation to review WPTS for the purpose of adopting a more efficient manual hot cut process for non-batch hot cuts).

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court") vacated and remanded portions of the FCC's Triennial Review Order. United States Telecom Association v. Federal Communications Comm'n, No. 00-1012 (D.C. Cir. March 2, 2004) ("USTA II"). In USTA II, the D.C Circuit Court found that the FCC's delegation of authority to state public utility commissions to make impairment determinations was unlawful. USTA II at 18. The D.C. Circuit Court stayed its vacatur until "no later than the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from today's date [i.e., May 1, 2004]." Id. at 62. On March 3, 2004, Verizon filed a motion with the Department requesting that, given the D.C. Circuit Court's decision in USTA II, the Department stay Track A (Impairment Issues) of the Department's D.T.E. 03-60 proceeding, but go forward with Track B (Hot Cut Issues). On March 4, 2004, the Department issued a Hearing Officer Notice, staying the D.T.E. 03-60 proceeding for three weeks in order to receive comments from the parties on Verizon's motion and the jurisdictional basis for going forward with this proceeding given the D.C. Circuit Court's decision in USTA II. On March 10, 2004, Verizon amended its motion to request that the Department stay all matters in the D.T.E. 03-60 proceeding with the exception of the Department's inquiry into Verizon's proposed WPTS hot cut process (i.e., the individual or "non-batch" hot cut proposal).

AT&T Communications of New England, Inc. ("AT&T"), MCI, Covad Communications Company ("Covad"), and Conversent Communications of Massachusetts, LLC ("Conversent") filed oppositions to Verizon's motion. Joint oppositions were filed by

the CLEC Coalition[6] and DSCI Corporation (jointly, "CLEC Coalition/DSCI"), and Choice One Communications Corporation of Massachusetts, Inc. and Focal Communications Corporation of Massachusetts (jointly, "Choice One/Focal"). The parties' arguments are set forth below.

II. POSITIONS OF THE PARTIES

A. Verizon

In its motion to stay, Verizon argues that the Department should stay Track A (Impairment Issues) of this proceeding because the recent ruling by the D.C. Circuit Court invalidated both the FCC's delegation of authority to determine whether CLECs are impaired without access to unbundled elements and the substantive tests that the FCC promulgated for making such determinations (Verizon Motion to Stay at 1). Verizon argues that continuing Track A of this proceeding in light of the D.C. Circuit Court's decision would be inefficient for both the parties and the Department (id.). Verizon argues that, although the D.C. Circuit Court stayed its vacatur for 60 days, thereby giving the FCC a small window of time to revise both its process and standards, it would be "feckless" of the Department to continue these proceedings which exist under an unlawful delegation and which are aimed at the wrong substantive tests (id. at 2). Verizon argues that the Department should stay further proceedings in Track A for a minimum of 60 days, or at least until such time as it is clear whether there will be any continuing state role in impairment determinations (id.).

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[6] The CLEC Coalition consists of Broadview Networks, Inc., Bullseye Telecom, InfoHighway Communications Corporation, McGraw Communications, Inc., and Metropolitan Telecommunications, Inc.

In its amendment to its motion to stay, Verizon argues that the Department likewise has no cause or mandate to proceed with the batch hot cuts investigations in Track B of this proceeding (Verizon Amendment to Motion to Stay at 1). Verizon argues that the D.C. Circuit Court vacated the FCC's national finding of impairment for mass market switching upon which the rationale for requiring a batch hot cuts process was based, leaving the Department with no reason or basis for considering a batch hot cuts process at this time (id.). However, given that the Department's investigation of Verizon's proposed WPTS hot cut process did not arise from the FCC's Triennial Review Order, but rather from the Department's own UNE Rates Proceeding, D.T.E. 01-20, Verizon suggests that the Department can and should proceed with consideration of that matter (id.).

Verizon further argues that if the Department moves forward with this proceeding and the D.C. Circuit Court's decision is upheld, the Department will have wasted public and private resources – in preparing for and attending hearings, submitting briefs, analyzing evidence, etc. – in order to decide on an issue that the Department has no authority to determine, based on standards that have been struck down (Verizon Comments at 3).[7] On the other hand, argues Verizon, if the Department temporarily stays this proceeding and the D.C. Circuit Court decision is stayed pending Supreme Court review, the Department can easily pick up where it left off (id. at 4). Verizon states that, if the Department grants Verizon's motion but later lifts its stay, Verizon will waive any claim that the Department has failed to

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[7] On March 12, 2004, Verizon filed Comments in response to the Department's March 4, 2004 request for discussion on the proper procedural approach going forward and in response to parties' oppositions to Verizon's motion to stay.

act within the Triennial Review Order-mandated nine-month period as long as the Department enters a decision within the nine-month period plus the period of time the stay was in effect (id.).

Finally, Verizon argues that the Department is not conducting a general review of the state of competition in Massachusetts in this proceeding (id. at 6). Rather, argues Verizon, the Department's investigation is limited to specific issues relevant to the FCC's trigger rules, and there is no reason to believe those facts would still be relevant or sufficient following an FCC decision on remand (id.). Therefore, Verizon argues that the "continuation of fact-finding" at this stage stressed by the CLECs would be of little benefit (id. at 6-8).

B. AT&T

In its opposition to Verizon's motion to stay, AT&T argues that the D.C. Circuit Court's USTA II decision is likely to be stayed for a very long time pending review by the United States Supreme Court, and the rules and deadlines in the Triennial Review Order, including the nine-month deadline for state investigations, will remain in effect throughout the stay (AT&T Opposition at 2-3). AT&T suggests that, by staying this proceeding, the Department could find itself in a position where it could no longer comply with its current obligations under the Triennial Review Order (id. at 3). In addition, AT&T argues that if the FCC is required to re-analyze the impairment issues as a result of the USTA II decision, the FCC will need to base its decisions on granular, market-specific factual findings (id. at 4). AT&T argues that the state commissions that gather these facts within their jurisdictions will provide important input to the FCC and thereby influence the FCC's ultimate findings (id.).

With respect to jurisdiction, AT&T argues that, even if the D.C. Circuit Court's vacatur were to take effect, the Department would still have jurisdiction to go forward with this proceeding under both federal law and Massachusetts law (id. at 7). AT&T argues that the Department retains the authority under federal law to require Verizon to provide access to unbundled elements wherever CLECs would be impaired without them (id. at 7, citing 47 U.S.C. §§ 251, 252). In addition, AT&T argues that the Department has broad powers under state law to regulate Verizon's network and wholesale services and has long recognized its authority under state law to require Verizon to provide access to unbundled network elements ("UNEs") (id.). Although the Department recently concluded in an order in docket D.T.E. 98-57-Phase III that the Department lacks the power to require unbundling of particular elements under state law where the FCC has made findings that ILECs are not required to unbundle the same element under federal law, AT&T argues that the Department reads the scope of its authority too narrowly (id. at 8).[8] AT&T argues that, even if the D.C. Circuit Court's vacatur goes into effect and if the result of the vacatur is that the Department is left without any FCC guidance regarding the scope of Verizon's unbundling obligations, then the Department's preemption concerns addressed in D.T.E. 98-57-Phase III would not arise, and the Department would continue to have the power and obligation under both federal and state law to address Verizon's unbundling obligations in Massachusetts (id.).

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[8] AT&T has appealed to the Massachusetts Supreme Judicial Court the Department's holding in D.T.E. 98-57-Phase III-D (January 30, 2004) that the Department could not require the unbundling of packet switching under state law consistent with the FCC's regulations (see AT&T Opposition at 8).

In addition, AT&T argues that the Department has jurisdiction to continue with its investigation on this docket pursuant to its authority under G.L. c. 159 to ensure that Verizon's retail rates are just and reasonable (AT&T Jurisdiction Letter at 1).[9] AT&T argues that, in the Department's Alternative Regulation proceeding, D.T.E. 01-31, the Department determined that, given CLEC access to UNEs, competition would be sufficient to discipline Verizon's retail rates for business end users, and expressly on that basis essentially price deregulated Verizon's retail rates for business services (id. at 2). AT&T argues that if CLECs were precluded from access to UNEs necessary for them to compete sufficiently to assure retail rates that the Department deemed were just and reasonable, the Department would need to determine whether the resulting level of competition remains sufficient to preclude re-regulation of Verizon's retail rates (id.).

With regard to Verizon's amendment to its motion to stay, AT&T argues that the Department should go forward with its investigation of all hot cut issues, including Verizon's proposed batch and "large job" hot cuts processes, not just the WPTS process (AT&T Further Opposition at 2).[10] AT&T argues that Verizon's obligations with regard to hot cuts, as discussed in the Department's UNE Rates Proceeding, D.T.E. 01-20, is not limited to offering

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9 On March 12, 2004, AT&T supplemented its opposition to Verizon's motion to stay by filing a separate letter responding to the Department's query on the proper jurisdictional basis for going forward (herein referred to as "AT&T Jurisdiction Letter").

10 In response to Verizon's amendment to its motion to stay, on March 12, 2004, AT&T filed an opposition to Verizon's amendment, referenced herein as "AT&T Further Opposition."

just the WPTS process (id. at 2-3). Rather, argues AT&T, compliance with the Department's objective of a simplified, seamless, and low cost process for hot cuts is not confined to the WPTS process, but includes the proposed "large job" and batch hot cuts processes as well (id. at 4). AT&T argues that the benefits and efficiency gains that will result from low cost and seamless hot cut processes will inure to competition and Massachusetts consumers regardless of what happens with respect to USTA II (id. at 5).

Lastly, with respect to a procedural schedule, AT&T suggests that it would be appropriate for the Department to conclude its fact-finding in this proceeding as soon as possible in order to be able to comply with the Triennial Review Order's July 2004 deadline (AT&T Opposition at 8).

C. CLEC Coalition/DSCI

In its opposition, CLEC Coalition/DSCI argue that the Department should reject Verizon's motion to stay as premature (CLEC Coalition/DSCI Opposition at 1). CLEC Coalition/DSCI argue that the D.C. Circuit Court's vacatur of the Triennial Review Order will not be effective for at least 60 days, and may never be put into effect if a further stay is issued (id. at 1-2). Moreover, CLEC Coalition/DSCI argue that the record developed in this proceeding will provide a useful tool to the FCC when examining impairment in Massachusetts in any further proceedings resulting from the USTA II decision (id. at 2). Therefore, CLEC Coalition/DSCI urge the Department to go forward and complete the fact-finding portion of this proceeding (id.).

In the event the Department is inclined to grant Verizon's motion to stay, CLEC Coalition/DSCI request that the Department also take the following steps: (1) require all parties to stipulate to the admission of all discovery responses, pre-filed testimony, and associated exhibits into the record of this proceeding; (2) enter into the record of this proceeding all discovery responses, all pre-filed testimony, and associated exhibits filed by the parties; (3) permit parties the right to cross-examine witnesses if and when this proceeding recommences; (4) hold this proceeding in abeyance, pending the outcome of any appeals of USTA II and any FCC action; and (5) schedule a status conference for 30 days after issuance of the Department's order holding this proceeding in abeyance (id.).

Lastly, subject to further review, CLEC Coalition/DSCI support Verizon's offer to voluntarily forbear from seeking relief from the FCC if the Department does not complete this proceeding by July 2, 2004, the deadline established in the Triennial Review Order for states to complete their impairment proceedings (id. at 3).

D. MCI

In its opposition, MCI argues that the D.C. Circuit Court's decision does not prevent the Department from going forward with this proceeding (MCI Opposition at 1). MCI argues that because the D.C. Circuit Court's vacatur is stayed and the Triennial Review Order is still in effect, the only way for the Department to meet the Triennial Review Order's time constraints is to proceed with hearings and briefing (id. at 1-2). MCI notes that the D.C. Circuit Court did not make any findings of non-impairment, therefore, even if the vacatur goes into effect, the matter would be remanded to the FCC for re-examination (id. at 2). MCI

argues that states that fail to move forward and develop an evidentiary record that they can share with the FCC will be rendered mute and irrelevant to any such FCC review (id.). Moreover, MCI argues that having some or all of the evidence already collected and analyzed in a granular fashion at such time as the FCC proceeds would materially speed the FCC's completion of this massive task (id. at 3).

MCI urges the Department to follow the lead of the New York Public Service Commission, whose Chairman has pledged to continue on with that Commission's investigation (id.). MCI argues that the factual record compiled by the Department in this proceeding will shed considerable light on the nature of the wholesale market for UNE-P, UNE-L, and related network elements for the mass market, therefore, the Department should move forward with its investigation (id. at 3-4).

E. Covad

Covad also opposes Verizon's motion to stay (Covad Opposition at 1). Covad argues that the Department's efforts to gather, analyze, and evaluate facts about competition in Massachusetts is critical to ensure that residents continue to be able to choose new telecommunications services, greater innovation, and lower prices (id.). Covad stresses that the Triennial Review Order is currently in effect and that the role of state commissions in gathering granular information is imperative to maintenance of competition in the industry (id.). Covad states that it is a small company struggling to find the resources to continue to participate in these proceedings and recognizes the burdens that state commissions will

undertake in going forward with this proceeding (id.). However, Covad argues that it is vital that the Department continue its efforts in this docket (id.).

F. Conversent

In its opposition, Conversent argues that Verizon's motion to stay should be denied and that the Department should continue with its fact-finding in this proceeding (Conversent Opposition at 1). Conversent concurs with other CLECs that the information gathered by the Department in this proceeding will aid the FCC in its future evaluation, if the FCC is compelled to do so by the USTA II decision (id. at 2). Conversent also points out that the D.C. Circuit Court did not vacate the impairment triggers with respect to unbundled transport and asserts that the Court took no issue with the FCC's conclusions that a finding of non-impairment would be found based on the existence of three self-provisioners or two wholesale providers (id. at 3).

With respect to jurisdiction, Conversent argues that the D.C. Circuit Court's decision has no impact on the Department's hot cuts investigation in Track B of this proceeding; thus, the Department should press on with this investigation as well as the impairment analysis for loops, transport, and switching because the delegation of authority pursuant to the Triennial Review Order is still in effect during the stay of the vacatur (id.). Conversent also argues that notwithstanding the legal uncertainty as to the applicable federal rules construing and applying the impairment standard, the Department still has independent authority to address unbundling requirements on its own in this or another proceeding (id. at 4). Conversent argues that the Department could establish UNEs under state law on a permanent basis or it could enter an

order that keeps existing wholesale tariffs in place until such time as the FCC sets new rules or the Triennial Review Order is reinstated (id.). Moreover, Conversent argues that, given the uncertainty as to the circumstances under which Verizon must provided unbundled transport and switching, the Department should order that the status quo be maintained and that all current UNEs that are set forth in Verizon's wholesale tariff remain available until the Department enacts its own rules to govern unbundling in Massachusetts or new federal unbundling rules are implemented by the FCC (id. at 5-6). At a minimum, argues Conversent, the Department should mandate that Verizon is required to continue to provide unbundled dark fiber dedicated transport because it is likely that all dark fiber facilities will ultimately be mandated as UNEs under federal law (id. at 6).

Conversent also argues that the Department has the authority under 47 U.S.C. § 251(d)(3) to implement its own rules governing the unbundling of networks (id. at 7). Conversent suggests that the Department exercise this authority in the D.T.E. 03-60 proceeding or in another proceeding (id.). Conversent submits that, in the absence of clear federal rules interpreting and applying impairment standards for transport and switching, state rules that are enacted in accordance with Sections 251(d)(3) and 261 are especially warranted to ensure that Verizon complies with its duty to provide UNEs under Section 251(c) as Congress expected (id. at 8).

Finally, Conversent argues that the Department should require Verizon to file a tariff for dark fiber (and other interoffice transmission facilities) pursuant to its obligations in 47 U.S.C. § 271, under which Verizon obtained authority to enter the long distance market (id.).

Conversent argues that the Department should require Verizon to file tariffs within 30 days to implement the unbundling obligations in Section 271 as a condition of continued authorization to offer long distance services to customers in Massachusetts (id. at 9).

G. Choice One/Focal

Choice One/Focal join the other CLECs in recommending that the Department deny Verizon's motion to stay and continue with this proceeding (Choice One/Focal Opposition at 2). Choice One/Focal argue that the Department has the legal authority to continue with this proceeding by virtue of the authority granted to it under G.L. c. 159, §§ 12, 13, which govern the practices and services of common carriers in the Commonwealth (id.). Choice One/Focal further argue that the Department has authority to continue under 47 U.S.C. § 251(d)(3), which preserves the rights of state commissions to implement access and interconnection obligations of carriers, as long as the state rules are consistent with federal law (id.). Choice One/Focal argue that, once the vacatur goes into effect, there will be no federal rules, therefore, any state rules implemented by the Department would not be inconsistent with federal law (id. at 2-3).

Finally, Choice One/Focal argue that, if the Department is inclined to temporarily defer this proceeding as a result of the uncertainty created by the USTA II decision, Choice One/Focal recommend that the Department undertake the same five steps propounded by CLEC Coalition/DSCI (see pages 6-7, above) which Choice One/Focal refer to as the "Florida [Public Service Commission] Approach" (id. at 3).

III. ANALYSIS AND FINDINGS

As noted above, on March 4, 2004, we stayed this proceeding for three weeks in order to receive responses from the parties to Verizon's motion and the Department's request as to the jurisdictional basis for going forward given the D.C. Circuit Court's vacatur in USTA II. As explained further below, given the uncertainty concerning the D.C. Circuit Court's vacatur, and possible actions by the FCC or the Supreme Court that will affect this proceeding,[11] we decide that the best course at this time is to extend the stay of the entire D.T.E. 03-60 proceeding (i.e., both Track A (Impairment) and Track B (Hot Cuts)).

As an initial matter, we agree with Verizon that our non-batch WPTS hot cuts investigation in Track B is unaffected by USTA II, and, therefore, there is no uncertainty regarding how D.C. Circuit Court action, or future FCC or Supreme Court action, would affect the Department's ability to go forward with the WPTS investigation. However, we have determined that there are efficiency gains in combining all of our hot cut investigations (both batch and non-batch), and, as long as there is a possibility that our batch and large job hot cuts investigations will go forward, we would want to continue to combine our WPTS investigation with them. We believe the efficiency gains to the Department and parties outweigh the

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[11] The D.C. Circuit Court's vacatur is currently scheduled to take effect on May 1, 2004. Several CLECs have asserted that the vacatur will not enter as the Supreme Court will likely issue a stay pending its review of the D.C. Circuit Court's decision. However, whether the Solicitor General of the United States will even petition for certiorari is still unknown at this time. In addition, there is a possibility that the FCC may issue new unbundling rules, or other instructions which affect these proceedings, prior to expiration of the stay of the vacatur. We note that on March 31, 2004, the FCC indicated its intention to petition the D.C. Circuit Court for a 45-day extension of its stay in order to allow for additional carrier negotiation.

disadvantages to CLECs from the additional delay in completing our investigation of the WPTS process. We note that Verizon currently offers CLECs access to the WPTS process on a negotiated basis. See D.T.E. 01-20, at 5, Reply Comments of Verizon Regarding Its Revised Compliance Filing (June 26, 2003). Therefore, because we extend the stay of our batch and large job hot cuts investigations, we will do the same for our WPTS investigation, with the understanding that we could "peel off" our WPTS investigation as entirely separate from any obligations arising under the Triennial Review Order.

Turning to arguments presented by the CLECs in favor of going forward with this proceeding, we have accepted the role envisioned for state regulators by the FCC under the Triennial Review Order. We have conducted multiple rounds of discovery, and received and reviewed copious pre-filed testimony concerning the trigger analyses for loops, transport, switching, and the establishment of three hot cut processes. We were on the verge of evidentiary hearings when the D.C. Circuit Court issued USTA II. Had USTA II not issued, we were on schedule to conduct the hearings, receive briefs, and issue our own Order within the time constraints required in the Triennial Review Order. However, the D.C. Circuit Court's action and the present uncertainty of the FCC's response makes us reluctant to proceed with evidentiary hearings and to evaluate parties' legal arguments in briefs until we are certain

what rules we are to apply. To act otherwise would be an inefficient use of the Department's and parties' resources.[12]

The CLECs credibly state that staying this proceeding further means that we will be unlikely to meet the July 2, 2004 deadline contained in the Triennial Review Order, should the D.C. Circuit Court's vacatur of that requirement not go into effect. We expect that if the July 2, 2004 deadline does survive, the FCC will provide a reasonable timetable within which the Department may act on the issues contained in the Triennial Review Order.[13]

As a final point, given the degree of uncertainty which we face, we are unable to specify the length of the stay we hereby extend. However, we anticipate that state commissions will have a clearer idea as to their obligations when and if the D.C. Circuit Court's vacatur goes into effect on May 1, 2004. Events will inform our course of action. For now, the stay is extended indefinitely. Parties may also move the Department to lift the stay at any time if circumstances change.

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[12] We agree with Verizon that we have not been conducting a general evaluation of the state of competition in Massachusetts in this proceeding. Rather, from the outset our impairment analysis has been limited to an evaluation of Verizon's satisfaction of the FCC's triggers as defined in the Triennial Review Order. See D.T.E. 03-60, Hearing Officer Memorandum (November 24, 2003).

[13] We note that, given the uncertainty surrounding our current obligations, several carriers have indicated that they would not pursue a claim with the FCC that the Department "failed to act" by the July 2, 2004 deadline, in the event the Department further stayed this proceeding (see Verizon Comments at 4; CLEC Coalition/DSCI Comments at 3).

IV. ORDER

After due consideration, it is

ORDERED: The motion to stay of Verizon New England, Inc. d/b/a Verizon Massachusetts is granted as modified herein.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner